

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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United States of America,

Case No. 2:15-cr-00062-APG-DJA

Plaintiff,

Order

v.

Louis Matthews,

Defendant.

Defendant Louis Matthews has filed a motion for leave to proceed *in forma pauperis* in his criminal case, checking the box that he is a movant under 28 U.S.C. § 2255. (ECF No. 422). Because the Court finds that Defendant is likely attempting to move to vacate, set aside, or correct his sentence—which motion does not require a filing fee—it denies his motion to proceed *in forma pauperis* as moot. The Court finds these matters properly resolved without a hearing. LR 78-1.

There is no filing fee required of a party filing a motion under 28 U.S.C. § 2255. *See U.S. v. Fisher*, No. 2:08-cr-00085-RLH-PAL, 2011 WL 2682762, at *3 (D. Nev. July 11, 2022). Defendant thus need not apply to proceed *in forma pauperis*, and the Court denies his motion as moot. To the extent Defendant wishes to file a motion requesting the sentencing court to vacate, set aside, or correct his sentence, he must file a *motion* under 28 U.S.C. § 2255. *See* 28 U.S.C. § 2255(a); *see United States v. Vincent*, No. 2:16-cr-00168-GMN-NJK-1, 2021 WL 1667961, at *2 (D. Nev. April 27, 2021).

A motion under 28 U.S.C. § 2255 may be brought on the following grounds: “(1) the sentence was imposed in violation of the Constitution or laws of the United States; (2) the court was without jurisdiction to impose the sentence; (3) the sentence was in excess of the maximum authorized by law; or (4) the sentence is otherwise subject to collateral attack.” *Id.*; *see United States v. Berry*, 624 F.3d 1031, 1038 (9th Cir. 2010). “[A] district court may deny a Section 2255

1 motion without an evidentiary hearing only if the movant's allegations, viewed against the record,
2 either do not state a claim for relief or are so palpably incredible or patently frivolous as to
3 warrant summary dismissal." *United States v. Burrows*, 872 F.2d 915, 917 (9th Cir. 1989).

4 Motions pursuant to § 2255 must be filed within one year from "the date on which the
5 judgment of conviction becomes final." 28 U.S.C. § 2255(f)(1). "[A] district court may deny a
6 Section 2255 motion without an evidentiary hearing only if the movant's allegations, viewed
7 against the record, either do not state a claim for relief or are so palpably incredible or patently
8 frivolous as to warrant summary dismissal." *Burrows*, 872 F.2d at 917. "No evidentiary hearing
9 is necessary when the issue of credibility can be conclusively decided on the basis of
10 documentary testimony and evidence in the record." *Shah v. United States*, 878 F.2d 1156, 1160
11 (9th Cir. 1989).

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13 **IT IS THEREFORE ORDERED** that Defendant's application to proceed *in forma*
14 *pauperis* (ECF No. 422) is **denied as moot**. To the extent Defendant wishes to file a motion
15 requesting the sentencing court to vacate, set aside, or correct his sentence, he must file a *motion*
16 under 28 U.S.C. § 2255.

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18 DATED: May 5, 2022



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20 DANIEL J. ALBREGTS
21 UNITED STATES MAGISTRATE JUDGE
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